



# OLR RESEARCH REPORT

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## **RELATIONSHIP BETWEEN THE HEALTH EXCHANGE AND THE DEPARTMENT OF INSURANCE**

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You asked for a description of the interaction between the Connecticut Health Insurance Exchange and the state Insurance Department. Specifically, you were interested in (1) the department's oversight role, (2) whether the exchange is bound by the same laws as insurance companies, (3) procedures for resolving complaints regarding the exchange, and (4) reporting requirements that apply to the exchange.

### **SUMMARY**

The exchange, which will go into operation in 2014, will be an online marketplace where individuals and small businesses will be able to compare and purchase qualified health plans offered by insurers. The exchange will not offer insurance itself or provide the services provided by insurance companies. As a result, it is not subject to oversight by the Insurance Department and is not subject to the laws governing insurance companies, although certain exchange employees must be licensed by the department. In addition, the insurers participating in the exchange must be licensed by the Insurance Department and the department will provide various services to the exchange.

The exchange has not developed procedures, to date, on how to resolve complaints regarding it. The Insurance Department is and will continue to be responsible for handling complaints about insurers, including those that participate in the exchange.

The law requires the exchange to report to the governor and legislature annually in 2012, 2013, and 2014, on several policy issues. The report must, among other things, recommend whether to establish separate exchanges for individuals and small employers or one combined exchange. It must also address other issues, such as the relationship between the exchange and insurance producers. The law also requires the exchange to issue a second report to the governor and legislature annually on the exchange's financial condition and several other fiscal issues.

The exchange's website is <http://www.ct.gov/hix/site/default.asp>.

## **ROLE OF THE EXCHANGE**

### ***Federal Law***

The exchange was formed to implement provisions of the federal Patient Protection and Affordable Care Act (PPACA), as amended by the Health Care and Education Reconciliation Act of 2010. The federal law calls for such exchanges to act as online marketplaces where individuals and small businesses will be able to compare and purchase qualified health insurance plans.

PPACA specifies that an exchange must, among other things:

1. implement procedures to certify, recertify, and decertify qualified health (insurance) plans;
2. operate a toll-free hotline;
3. maintain a website where people can view and compare information on qualified health plans;
4. provide information on eligibility requirements for Medicaid and other state or local programs; and
5. enroll individuals in these programs if the exchange determines they are eligible for them.

Beginning in 2014, individuals may enroll in a qualified health plan through an exchange if they are lawful residents who are not incarcerated. Until 2016, states can define a small business as one with 100 or fewer employees or 50 or fewer employees. Connecticut currently defines a small employer as one with 50 or fewer employees, including a self-employed person. Beginning in 2016, PPACA requires small business to be defined as one with 100 or fewer employees. Beginning in 2017, states may expand the exchange to larger employers, but are not required to do so.

For further information on PPACA, see OLR report 2010-R-0255.

### ***State Law***

PA 11-53, which created Connecticut's exchange, specifies that its goals are to (1) reduce the number of people without health insurance in the state and (2) help individuals and small employers obtain health insurance by, among other things, offering easily comparable and understandable information about health insurance options.

PA 11-53 authorizes the exchange to certify a health benefit plan as a qualified health plan eligible to participate in the exchange if, among other things:

1. the plan provides the federally designated essential health benefits and
2. the insurance commissioner has approved the premium rates and contract language.

To be eligible to offer qualified health plans through the exchange, an insurer or other health carrier must:

1. be licensed and in good standing to offer health insurance in Connecticut;
2. offer through the exchange at least one plan at the “silver” coverage level (covering 70% of the cost of essential health benefits) and one plan at the “gold” coverage level (covering 80% of the cost of essential health benefits) through each exchange in which it participates (i.e., the exchange for individuals and the exchange for small employers); and

3. charge the same premium rate for each qualified health plan whether offered (a) through the exchange or outside it or (b) directly by the carrier or through an insurance producer.

## **RELATIONSHIP BETWEEN THE HEALTH EXCHANGE AND THE DEPARTMENT OF INSURANCE**

The exchange is overseen by a 14-member board, chaired by lieutenant governor Nancy Wyman. Anne Melissa Dowling, deputy commissioner of the Insurance Department, is an ex-officio, non-voting member of the board. The board's complete membership is available at <http://www.ct.gov/hix/cwp/view.asp?a=4295&q=506360>.

Unless expressly specified, PA 11-53 and the exchange's actions do not preempt or supersede the insurance commissioner's authority to regulate insurance in Connecticut. All insurers offering qualified health plans in Connecticut must comply with all applicable state health insurance laws and regulations and the insurance commissioner's orders. As noted above, the insurance commissioner must approve the premium rates and contract language of plans that are offered on the exchange.

On the other hand, since the exchange will not be offering insurance itself, it is not subject to oversight by the department, although any exchange employee whose primary role is to help individuals or small employers buy health insurance plans offered on the exchange must be licensed by the department as an insurance producer within 18 months after beginning employment with the exchange. The exchange is not subject to the laws governing insurance companies.

On May 14, 2012, the exchange and the department entered into a memorandum of understanding (MOU) that described the services the department will provide to the exchange related to its statutory functions and other services the department will provide. Among other things, the department will (1) allow the exchange to access information regarding health insurer licensure, (2) investigate allegations misconduct by an insurer, and (3) participate in work groups established by the exchange. The department will also make one or more presentations to the exchange on the department's role in reviewing and responding to customer complaints. The MOU is attached for your reference.

## ***Reporting Requirements***

The law requires the exchange's chief executive officer (CEO) to report to the governor and legislature annually by January 1, 2012, 2013, and 2014, on the exchange in Connecticut. The report must address whether to:

1. establish separate exchanges for individuals and small employers or one combined exchange,
2. merge the individual and small employer health markets,
3. revise the definition of "small employer" from 50 to 100 employees,
4. allow large employers to participate in the exchange starting in 2017,
5. require qualified health plans to provide only the federally defined essential health benefits package or to also include additional state mandated benefits, and
6. list dental benefits separately on the exchange's website where a qualified health plan includes dental benefits.

The report also must address:

1. the relationship between the exchange and insurance producers;
2. the exchange's capacity to award grants to navigators (entities that help market the exchange);
3. ways to ensure the exchange is financially sustainable by 2015 (as required by PPACA), including assessments or user fees charged to carriers; and
4. ways to independently evaluate consumers' experience, including hiring "secret shoppers."

The act also requires the exchange's CEO to report to the governor and legislature annually, beginning January 1, 2012, on:

1. any private or federal funds received during the prior calendar year and how they were spent,

2. the adequacy of federal funds for the exchange before January 1, 2015,
3. the amounts and recipients of any grants awarded, and
4. the exchange's current financial status.

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